
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KENNEDY FUNDING, INC., Plaintiff, vs. TRI-CITY INVESTMENT, L.L.C., and RANDALL F. MILLER. Defendants.	ORDER & MEMORANDUM DECISION 2:05CV527 TC
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Plaintiff Kennedy Funding, Inc. (“Kennedy”), brought this action in the Fourth Judicial District Court of Utah County, State of Utah, seeking to recover deficiency following a trustee’s sale of real property under Utah Code § 57-1-32 against Defendants Tri-City Investment, L.L.C. (“Tri-City”), and Randall F. Miller. On June 23, 2005, Defendants removed this case to the United States District Court, District of Utah, on the basis of diversity jurisdiction under 28 U.S.C. § 1332. In their notice of removal, Defendants state that Tri-City is a Utah limited liability company and that Mr. Miller is a Utah resident while Kennedy is a New Jersey Corporation.

Under 28 U.S.C. § 1441:

Any civil action of which the district courts have original jurisdiction founded on a claim founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the

State in which such action is brought.

28 U.S.C. § 1441(b). As noted above, both named Defendants in this action are citizens of the State of Utah. This action was initially filed in the Fourth Judicial District Court of Utah County, State of Utah. Accordingly, it appears that this action was not properly removed.

Defendants are ordered to show cause by September 8, 2005, why this case should not be remanded to the Fourth Judicial District Court of Utah County, State of Utah.

SO ORDERED this 9th day of August, 2005.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge